
By: Delegates McHale, Boston, Benson, Dypski, Harrison, Kirk, and Hammen

Introduced and read first time: February 12, 1996

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation - Disability Due to Maryland Occupational Safety and Health**
3 **Act Violation - Action for Damages**

4 FOR the purpose of providing that, in addition to bringing a workers' compensation
5 claim, a covered employee may bring an action for damages against the employer of
6 the covered employee if the covered employee has a permanent partial disability
7 that equals a certain percentage loss of a finger, toe, hand, foot, arm, leg, or the
8 body as a whole and that was the result of a violation of an occupational safety and
9 health standard or failure to comply with a citation, notice, order, injunction, or
10 temporary restraining order issued under the Maryland Occupational Safety and
11 Health Act; and generally relating to a permanent partial disability due to a
12 violation of the Maryland Occupational Safety and Health Act.

13 BY repealing and reenacting, with amendments,
14 Article - Labor and Employment
15 Section 9-509
16 Annotated Code of Maryland
17 (1991 Volume and 1995 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - Labor and Employment**

21 9-509.

22 (a) Except as otherwise provided in this title, the liability of an employer under
23 this title is exclusive.

24 (b) Except as otherwise provided in this title, the compensation provided under
25 this title to a covered employee or the dependents of a covered employee is in place of
26 any right of action against any person.

27 (c) (1) If an employer fails to secure compensation in accordance with this title,
28 a covered employee who has sustained an accidental personal injury, compensable hernia,
29 or occupational disease or, in case of death, the personal representative of the covered
30 employee may:

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1 (i) bring a claim for compensation under this title; or

2 (ii) bring an action for damages.

3 (2) In an action of a covered employee or personal representative under this
4 subsection, an employer may not plead as a defense that:

5 (i) the covered employee assumed the risk of employment;

6 (ii) the covered employee was contributorily negligent; or

7 (iii) the negligence of a fellow servant caused the accidental personal
8 injury, compensable hernia, or occupational disease.

9 (d) If a covered employee is injured or killed as the result of the deliberate intent
10 of the employer to injure or kill the covered employee, the covered employee or, in the
11 case of death, a surviving spouse, child, or dependent of the covered employee may:

12 (1) bring a claim for compensation under this title; or

13 (2) bring an action for damages against the employer.

14 (E) IN ADDITION TO BRINGING A CLAIM FOR COMPENSATION UNDER THIS
15 TITLE, A COVERED EMPLOYEE OR, IN THE CASE OF DEATH, A SURVIVING SPOUSE,
16 CHILD, OR DEPENDENT OF THE COVERED EMPLOYEE, MAY BRING AN ACTION FOR
17 DAMAGES AGAINST THE EMPLOYER OF THE COVERED EMPLOYEE IF:

18 (1) THE COVERED EMPLOYEE HAS A PERMANENT PARTIAL DISABILITY
19 DUE TO AN ACCIDENTAL PERSONAL INJURY OR OCCUPATIONAL DISEASE;

20 (2) THE PERMANENT PARTIAL DISABILITY EQUALS A 25% OR GREATER
21 LOSS OF A FINGER, TOE, HAND, FOOT, ARM, LEG, OR THE BODY AS A WHOLE; AND

22 (3) THE ACCIDENTAL PERSONAL INJURY OR OCCUPATIONAL DISEASE
23 THAT CAUSED THE DISABILITY WAS THE RESULT OF:

24 (I) A VIOLATION OF AN OCCUPATIONAL SAFETY AND HEALTH
25 STANDARD ADOPTED BY THE COMMISSIONER OF LABOR AND INDUSTRY UNDER
26 TITLE 5 OF THIS ARTICLE;

27 (II) A FAILURE TO COMPLY WITH A CITATION OR A NOTICE
28 PROHIBITING USE OF AN APPARATUS ISSUED TO THE EMPLOYER BY THE
29 COMMISSIONER OF LABOR AND INDUSTRY OR AN AUTHORIZED REPRESENTATIVE
30 OF THE COMMISSIONER UNDER TITLE 5 OF THIS ARTICLE;

31 (III) A FAILURE TO COMPLY WITH AN ORDER PASSED BY THE
32 COMMISSIONER OF LABOR AND INDUSTRY UNDER TITLE 5 OF THIS ARTICLE; OR

33 (IV) A FAILURE TO COMPLY WITH AN INJUNCTION OR TEMPORARY
34 RESTRAINING ORDER ISSUED BY A CIRCUIT COURT UNDER TITLE 5 OF THIS
35 ARTICLE.

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 October 1, 1996.

